

**Amendment and Response Under 37 C.F.R. 1.116**

Applicant: Timothy V. Stagg et al.

Serial No.: 09/728,697

Filed: December 1, 2000

Docket No.: 54186US017

Title: PLASTIC FILM PACKAGING WITH TEARABLE TAPE STRIP

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**REMARKS**

This Amendment is responsive to the final Office Action mailed September 9, 2003. In that Office Action, the Examiner rejected claims 1, 2, 4, 5, 8, 10, 13, 14, 16-18, 20, 21, 24, 26, 29, 30, 32, 35, 37, 38, 41, 42, 44, 45, 47, 48, 51, and 52 under 35 U.S.C. §103(a) as being unpatentable over Riddell, U.S. Patent No. 4,773,541 ("Riddell") in view of Osborn, U.S. Patent No. 4,397,703 ("Osborn"). Claims 11 and 27 under 35 U.S.C. §103(a) as being unpatentable of Riddell in view of Osborn, and further in view of McClintock, U.S. Patent No. 5,217,307 ("McClintock"). Claims 15 and 31 were rejected under 35 U.S.C. §103(a) as being unpatentable over Riddell in view of Osborn, and further in view of Kim, U.S. Patent No. 5,203,634 ("Kim"). Claims 1, 5-10, 13, 14, 17, 21-26, 29, 30, 33-35, 38, 39, 45-48, and 52 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hodson et al., U.S. Patent No. 6,316,036 ("Hodson") in view of Osborn. Claims 11 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Hodson in view of Osborn, and further in view of McClintock. Claims 1, 2, 5, 8, 12, 14, 17, 18, 21, 24, 28, 30, 35, 36, 38, 42, 44, 45, 47-49, 51, and 52 were rejected under 35 U.S.C. §103(a) as being unpatentable over Union Carbide, Great Britain Patent Publication No. 923899 ("Union Carbide") in view of Osborn. Claims 11 and 27 were rejected under 35 U.S.C. §103(a) as being unpatentable over Union Carbide in view of Osborn, and further in view of McClintock.

With this Response, claims 12 and 28 have been cancelled and claims 1, 17, and 38 have been amended. Claims 1, 2, 4-11, 13-18, 20-27, 29-33, 35-39, 41, 42, and 44-52 remain pending in the application and are presented for reconsideration and allowance.

**35 U.S.C. §103 Rejections**

Independent claims 1, 17, and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Riddell in view of Osborn, over Hodson in view of Osborn, and over Union Carbide over Osborn. Each of the independent claims includes similar limitations to claim 1, which recites a packaging including a continuous, tear-resistant film and a tearable tape strip secured to the film. The continuous, tear-resistant film is formable to define a region for

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containing an article and is characterized by a puncture-propagation tear resistance of at least 20 N/ply. The tearable tape strip is configured to controllably tear an opening through the film for accessing the enclosed region upon tearing of the tearable tape strip. In this Office Action, each of the independent claims 1, 17, and 38 has been amended to incorporate the limitation recited in each of the now-cancelled claims 12 and 28. In particular, each independent claim further recites the tearable tape strip being defined by opposing, longitudinal edges and a central section, the central section being tearable relative to the opposing, longitudinal edges such that the tearable tape strip is internally tearable. None of the cited references teach or otherwise suggest such a limitation.

In particular, claims 12 and 28, which previously recited the new limitation of the independent claims, were rejected under 35 U.S.C. §103(a) as being unpatentable over Union Carbide in view of Osborn. As such, the Examiner has not relied upon Riddell or Hodson as teaching the new limitation of the amended, independent claims. Union Carbide also fails to teach this limitation of amended claims 1, 17, and 38. Union Carbide relates to heat sealable tear tapes for polyethylene film (Abstract). Union Carbide specifically identifies that higher density polyethylene films with densities between 0.93 g/cm<sup>3</sup> and 0.96 g/cm<sup>3</sup> tear with a uniformly edged tear (page 3, lines 69-78). Conversely, Union Carbide states that lower density polyethylene films having densities below 0.93 g/cm<sup>3</sup> do not have a neat edged tear (page 3, lines 78-83). Therefore, in the case of lower density polyethylene films, Union Carbide teaches that three tearable tape strips instead of one are to be used to facilitate shearing the low-density polyethylene film (page 3, lines 83-89).

In other words, Union Carbide teaches that three tape strips are required to "controllably tear" a polyethylene with a density less than 0.93 g/cm<sup>3</sup>, wherein the term "controllably tear" of the independent claims is construed in a manner consistent with the specification of the present application to refer to tearing the tape strip to produce "a substantially uniform or clean tear through the film" (Union Carbide, page 3, lines 83-89; Present Application, page 15, lines 3-5). Notably, the low density polyethylene "LDPE" as referenced by the Examiner in Table H of Osborn has a density less than 0.93 g/cm<sup>3</sup>, in particular, a density ranging from 0.916 – 0.923 g/cm<sup>3</sup> as evident by the attached printout (Exhibit A) from the Online Materials Database,

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Matweb.com. Therefore, to tear a film that is characterized by a puncture-propagation tear resistance ("PPT") of at least 20 N/ply, such as the LDPE in Table H of Osborn, Union Carbide teaches use of three tape strips. This is in direct contrast to the limitation of the amended independent claims 1, 17, and 38 in which a tearable tape strip, not multiple tearable tape strips, is configured to controllably tear an opening through the film, which is characterized by a PPT of at least 20 N/ply. Therefore, Union Carbide actually teaches against using a film with a PPT of at least 20 N/ply with a single tearable tape strip as required by the independent claims. For at least this reason, amended, independent claims 1, 17, and 38 are not taught or otherwise suggested by the cited references and are believed to be allowable.

The dependent claims 2, 4, 5, 8, 10-16, 18, 20, 21, 24, 26, 27-32, 35-38, 41, 42, 44, 45, 47-49, 51, and 52 were rejected under 35 U.S.C. §103(a) as being unpatentable over Riddell, Hodson, or Union Carbide in view of Osborn or Osborn further in view of McClintock or Kim. As described above, amended, independent claims 1, 17, and 38 are not taught or otherwise suggested by the cited references. The addition of McClintock and Kim fails to alter this analysis as neither reference was relied upon by the Examiner to teach the new limitation of the independent claims (previously addressed in claims 12 and 28). Therefore, dependent claims 2, 4, 5, 8, 10-16, 18, 20, 21, 24, 26, 27-32, 35-38, 41, 42, 44, 45, 47-49, 51, and 52, which each incorporate the limitations of the respective amended, independent claim 1, 17, or 38, are not taught or otherwise suggested by the cited references and are believed to be allowable.

Notably, although marked as rejected on the Office Action Summary of the Final Office Action (i.e., Paper Number 11), the exact rejection of claim 50 is not mentioned in the body of the Final Office Action. Applicant believes claim 50 to be allowable over any rejection cited above as being dependent upon the allowable amended base claim 38 for similar reasons as described above with respect to dependent claims 39, 41, 42, 44-49, 51, and 52.

**CONCLUSION**

In light of the above, Applicant believes independent claims 1, 17, and 38 and the claims depending therefrom, are in condition for allowance. Allowance of these claims is respectfully requested.

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No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 500471.

The Examiner is invited to contact the Applicants' Representative at the below-listed telephone number if there are any questions regarding this response.

Respectfully submitted,

Timothy V. Stagg et al.,

By their attorneys,

DICKE, BILLIG &amp; CZAJA, PLLC

Fifth Street Towers, Suite 2250

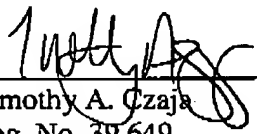
100 South Fifth Street

Minneapolis, MN 55402

Telephone: (612) 573-2004

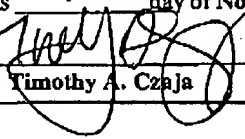
Facsimile: (612) 573-2005

Date: November 7, 2003  
TAC:JMS:jmc:mad

  
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Timothy A. Czaja  
Reg. No. 39,649

**CERTIFICATE UNDER 37 C.F.R. 1.8:**

The undersigned hereby certifies that this paper or papers, as described herein, are being filed via facsimile to Examiner Madsen at facsimile number (703) 872-9306 on this 7th day of November, 2003.

By   
Name: Timothy A. Czaja

**EXHIBIT A****MatWeb.com, The Online Materials Database****Overview - Low Density Polyethylene (LDPE), Extrusion Grade****Subcategory:** Film; LDPE; Polyethylene; Polymer; Thermoplastic

**Close Analogs:** Click the button to view the proprietary polymer grades listed in MatWeb that belong to this class. Please be aware that some proprietary polymers may not be listed because they fall into more than one class or because of ambiguity in manufacturer's information.

Proprietary Grades
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**Key Words:** Plastics, Polymers

The property data has been taken from proprietary materials in the MatWeb database. Each property value reported is the average of appropriate MatWeb entries and the comments report the maximum, minimum, and number of data points used to calculate the value. The values are not necessarily typical of any specific grade, especially less common values and those that can be most affected by additives or processing methods.

This and a wide range of polyethylene, polypropylene, PPS, and other polymers and chemicals are available from Chevron Phillips Chemical Company, [www.cpchem.com](http://www.cpchem.com). Phone 1-800-231-1212

Physical Properties	Metric		English Comments
Density	0.916 - 0.923 g/cc	0.0331 - 0.0333 lb/in <sup>3</sup>	Average = 0.919 g/cc; Grade Count = 18
Moisture Vapor Transmission	0.41 - 18 cc-mm/m <sup>2</sup> -24hr-atm	1.04 - 45.7 cc-mil/100 in <sup>2</sup> -24hr-atm	Average = 6.5 g-mm/m <sup>2</sup> -24hr-atm; Grade Count = 10
Melt Flow	0.33 - 13 g/10 min	0.33 - 13 g/10 min	Average = 5.8 g/10 min; Grade Count = 20
<b>Mechanical Properties</b>			
Tensile Strength, Ultimate	9.3 - 18 MPa	1350 - 2610 psi	Average = 12.2 MPa; Grade Count = 3
Tensile Strength, Yield	7.6 - 10 MPa	1100 - 1450 psi	Average = 8.4 MPa; Grade Count = 3
Elongation at Break	350 - 650 %	350 - 650 %	Average = 550%;

## MatWeb - Online Material Property Data Sheet

			Grade Count = 3
Secant Modulus	0.15 GPa	21.8 ksi	Grade Count = 1
Dart Drop	2.4 g	0.00529 lb	Grade Count = 1
Coefficient of Friction	0.6	0.6	Grade Count = 1
Seal Strength	1300 - 1500 g/25 mm	1300 - 1500 g/in	Average = 1400 g/25 mm; Grade Count = 8
Hot Tack Strength	230 g/25 mm	230 g/in	Grade Count = 3
<b>Thermal Properties</b>			
Melting Point	104 - 113 °C	219 - 235 °F	Average = 110°C; Grade Count = 5
Vicat Softening Point	84 - 128 °C	183 - 262 °F	Average = 100°C; Grade Count = 5
<b>Optical Properties</b>			
Haze	12 %	12 %	Grade Count = 1
Gloss	40 %	40 %	Grade Count = 1
<b>Processing Properties</b>			
Processing Temperature	180 - 320 °C	356 - 608 °F	Average = 270°C; Grade Count = 7

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